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*Attorneys for defendant Lakeview Loan
Servicing, LLC*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

DANIEL J. COLVIN and CENA M-M
TECCA,

Plaintiffs,

v.

LAKEVIEW LOAN SERVICING,
LLC,

Defendant.

Case No: _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441 and 1446, defendant
Lakeview Loan Servicing, LLC gives notice of removal of Montana Sixth Judicial

District, Park County, Cause No. DV-20-32 (the **state court action**) to this court.

I. STATEMENT OF THE CASE

1. Plaintiffs Daniel J. Colvin and Cena M-M Tecca commenced the state court action through filing a complaint on March 3, 2020. (**Ex. A** at 1.)

2. The complaint asserts claims entitled "FDCPA violation," "FCRA violation" and "Montana state statutes for FDCPA violations." (*Id.*)

II. BASIS FOR REMOVAL: FEDERAL QUESTION & DIVERSITY

A. Federal Question

1. District courts have federal question jurisdiction over "all civil actions arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331.

2. The general rule is a case meets the "arising under" standard if it is apparent federal law creates the plaintiff's cause of action from the face of the complaint. *See Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for So. Cal.*, 463 U.S. 1, 27-28 (1983).

3. This court has federal question jurisdiction because Mr. Colvin and Ms. Tecca assert claims under the Fair Debt Collection Practices Act (**FDCPA**), 15 U.S.C. § 1692 *et seq.*, and Fair Credit Reporting Act, 15 U.S.C. § 1681. (*See Ex. A* at 1); *see also Bennett v. Am. Med. Response, Inc.*, 226 Fed. App'x 725, 727 (9th Cir. 2007) (finding the district court "properly asserted federal question

jurisdiction" because the plaintiff alleged a "colorable claim arising under the FDCPA.")

4. This court has supplemental jurisdiction over Mr. Colvin and Ms. Tecca's remaining claim because it forms "part of the same case or controversy." 28 U.S.C. § 1367(a). A state law claim is part of the same case or controversy when it shares a "common nucleus of operative fact" with the federal claims and the state and federal claims would ordinarily be tried together. *Bahrampour v. R.O. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004). The facts related to Mr. Colvin and Ms. Tecca's state law claim is intertwined with their FDCPA claim. (*See generally*, **Ex. A**.)

B. Diversity

1. Diversity jurisdiction exists because there is complete diversity between the parties and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a)(1).

2. Mr. Colvin and Ms. Tecca are Montana citizens. (*See Ex. A* at 1.)

3. Lakeview is a Delaware and Florida citizen. As a limited liability company, it is a citizen of every state where its owners/members are citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Its sole member is Bayview MSR Opportunity Corp., which is a Delaware corporation with a principal place of business in Florida, making Lakeview a

citizen of Delaware and Florida for diversity purposes. *See id.*; 28 U.S.C. § 1332(c)(1).

4. The amount in controversy requirement exceeds \$75,000 because Mr. Colvin and Ms. Tecca demand the "[f]ull [a]mount of debt . . . [t]otaling in the [a]mount of \$535,872 [] be dismissed immediately." (**Ex. A** at 2.)

III. ALL PROCEDURAL REQUIREMENTS ARE SATISFIED

1. Lakeview's removal is timely. 28 U.S.C. § 1446(b); *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 334, 347-48 (1999). Mr. Colvin and Ms. Tecca filed a return of service showing service on Lakeview on March 16, 2020. This notice is filed within thirty days thereafter.

2. This court is the appropriate forum. Mr. Colvin and Ms. Tecca filed the state court action in the Montana Sixth Judicial District Court, Park County. This court is in the federal district embracing this district and county. 28 U.S.C. § 1441.

3. Venue is appropriate in the Billings division because Mr. Colvin and Ms. Tecca appear reside in Park County and filed the state court action there. *See* D. Mont. L.R. 3.2.

4. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders filed in the state court action are attached as **Exhibits A** (complaint) and **B**

(remaining filings)¹.

5. Lakeview will provide written notice of removal to Mr. Colvin and Ms. Tecca, and will file a copy of this notice with the clerk in the state court action as 28 U.S.C. § 1446(d) and D. Mont. L.R. 3.3(a) require.

6. Lakeview does not waive objections to service, jurisdiction, venue, or other defenses or objections it may have. Lakeview reserves all defenses, motions, and pleas. Lakeview prays the state court action be removed to this court, all further proceedings in the state court be stayed, and Lakeview receive all additional relief to which it is entitled.

WHEREFORE, Lakeview removes the state court action to this court.

¹ Lakeview cannot locate a copy of the summons, which is not currently on file in the state court action.

Respectfully submitted, this the 6th day of April, 2020.

AKERMAN LLP

/s/ Taylor T. Haywood

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*Attorneys for defendant Lakeview Loan
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CERTIFICATE OF SERVICE

I certify on the 6th day of April, 2020, a true and correct copy of the foregoing **NOTICE OF REMOVAL** was filed electronically via the Court's CM/ECF system and served via U.S. Mail, postage prepaid, addressed as follows:

Daniel J. Colvin
81 Olde Clyde Park Road
Livingston, Montana 59047

Pro se plaintiff

Cena M-M Tecca
81 Old Clyde Park Road
Livingston, Montana 59047

Pro se plaintiff

/s/ Taylor T. Haywood

Taylor T. Haywood